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Complaint Brought Pursuant to 42 U.S.C. sec. 1983 for False Arrest, False Imprisonment,
Malicious Prosecution, Intentional Infliction of Emotional Distress, Conspiracy and Negligence

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID EVANS

Plaintiff

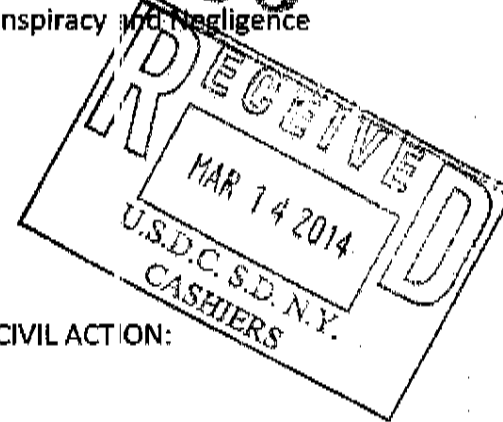
v.

THE CITY OF NEW YORK,
NEW YORK POLICE DEPARTMENT,
OFFICER LESLIE M ROSA (SHEILD# 025255)
OFFICER ISRAEL LOPEZ (SHEILD# 019123)
OFFICER JOHN DOE

Defendants

CIVIL ACTION:

VERIFIED COMPLAINT
JURY CLAIM
AS TO ALL COUNTS



INTRODUCTION

DAVID EVANS ["EVANS"] a resident of Bronx County, State of New York asserts the following claims against the defendants in the above-entitled action:

1. Violation of 42 U.S.C. 1983: False Arrest
2. Violation of 42 U.S.C. 1983: False Imprisonment
3. Violation of U.S.C. 1983: Excessive Force
4. Assault and Battery
5. Violation of 42 U.S.C. 1983: Malicious Prosecution
6. Intentional Infliction of Emotional Distress
7. Violation of 42 U.S.C. 1983: Conspiracy
8. Negligence

JURISDICTION

1. Jurisdiction of this court arises under 28 U.S.C. secs 1331, 1337, 1343(a), and 1367(a); 42 U.S.C. secs. 1983, 1985, 1986, and 1988; and 18 U.S.C. 1961-1968.
2. Jurisdiction of this court for the pendent claims is authorized by F.R Civ.P 18(a), and arises under the doctrine of pendent jurisdiction as set forth in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966).

PARTIES

3. Plaintiff David Evans [hereinafter "EVANS"] is a natural person residing in The Bronx, New York, United States of America; was a resident of The Bronx during all relevant times of this action.
5. Defendant City of New York (hereinafter "CITY") is a properly incorporated city in the State of New York
6. Defendant New York Police Department (hereinafter "NYPD") is an authorized agency of the City of New York
7. Defendants Police Officer Israel Lopez (hereinafter "LOPEZ"), Police Officer Leslie M. Rosa (hereinafter "ROSA"), and Officer John Doe are employees of the New York Police Department.
8. At all times material to this Complaint, Defendants CITY and the NYPD acted toward Plaintiff under color of the statutes, ordinances, customs and usage of the City and State of New York.
9. At all relevant times quotations as to violations of specific Constitutional Amendments are discussed as incorporated under the Fourteenth Amendment, with respect to non-federal actors.

FACTS

10. In the early morning of July 22, 2013, at approximately 12:15am, EVANS was walking along Prospect Avenue in the County of the Bronx with some friends heading home from a barbeque.
11. As he was walking, EVANS noticed another friend across the street and yelled out to him to say hello.
12. At the time EVANS yelled out to his friend, ROSA was patrolling the area on foot with her partner LOPEZ.
13. Upon hearing EVANS yell out to his friend, ROSA remarked "you are too big and too gay to be yelling out like that".

14. EVANS took exception to ROSA'S homophobic comment and exclaimed to ROSA she was being extremely unprofessional.
15. ROSA, angered by EVANS retort, directed him to walk away from the scene in a particular direction that was the opposite direction of which EVANS residence was.
16. Upon EVANS stating to ROSA "I don't live in that direction" and not walking in the direction ROSA instructed him to; ROSA grabbed EVANS by the arm.
17. EVANS pulled away, asserting his right not to be grabbed when he wasn't under arrest, but ROSA did not let go, to which ROSA'S partner, LOPEZ walked up to EVANS and sprayed EVANS in the face with mace.
18. As EVANS was disoriented and suffering from the extreme burning sensation in his eyes as a result of getting doused with mace in his eyes, ROSA began punching EVANS about the face and body.
19. ROSA and LOPEZ then attempted to handcuff EVANS. However, EVANS in an attempt to wipe the mace out of his eyes, coupled with the disorientation from being maced and beaten, did not place his hands in a position that allowed ROSA and LOPEZ to handcuff him.
20. As more NYPD officers appeared on the scene, they were eventually able to subdue EVANS and place him in a police car, despite EVANS pleading with the officers to get some water to flush his eyes out to alleviate the extreme painful burning sensation.
21. EVANS was brought to the 42nd precinct in the County of the Bronx, and continued to plead with officers to allow him to get some water to flush his eyes out.
22. EVANS was brought to a bathroom to relieve himself, but the sink was not operable and thus he could not flush his eyes out.
23. EVANS was then put inside a cell, but before the cell door was closed, an unnamed officer, JOHN DOE, entered the cell and punched EVANS in the face. As EVANS fell to the floor, the JOHN DOE kicked EVANS in the face repeatedly, breaking his nose, displacing the bone, which required surgery to fix.
24. EVANS was brought to Lincoln Hospital before being brought to central booking.
25. EVANS was brought to central booking after leaving Lincoln Hospital in police custody and was arraigned on charges of felony assault against a police officer.
26. EVANS was released and appeared in court approximately three (3) times before testifying in the Grand Jury on January 16, 2014. On that date the Grand Jury voted "No True Bill" and the case was dismissed.

27. EVANS followed up at Bronx Health Center and Montefiore Medical Center for further treatment and surgery on his face to repair his nose that was injured at the hands of the aforementioned officers.

COUNT 1: VIOLATIONS OF 42 U.S.C. 1983: FALSE ARREST

28. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1 through 27 above with the same force and effect as if herein set forth.

29. At all times relevant herein, the conduct of the Defendants were subject to 42 U.S.C. sections 1983, 1985, 1986 and 1988.

30. Acting under color of law, Defendant's engaged in a denial of EVANS' rights, privileges or immunities secured by the United States Constitution or by Federal Law, as incorporated by the 14th amendment.

31. There was no probable cause for the July 22, 2013 arrest and incarceration of EVANS and as a result his constitutional rights were violated.

32. As a result of the Defendant's unlawful and malicious action EVANS was temporarily deprived of both his liberty without due process of the law and his right to equal protection of the laws, and the due course of justice was impeached, in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States and 42 U.S.C. section 1983.

WHEREFORE, Plaintiff demands judgment for the false arrest against all the Defendant's jointly and severally, for the actual, general, special, compensatory damages in the amount of \$5,000,000 and further demands judgment against each of said defendants, jointly and severally for punitive damages in the amount of \$5,000,000 plus the costs of this action, including attorney's fees, and such actual relief deemed to be just and equitable.

"Punitive damages are recoverable in sec. 1983 suit where defendant's conduct is motivated by an evil motive or intent, or where it involves reckless or callous indifference to plaintiff's federally protected rights." *Smith v. Wade*, 461 U.S. 30, 50-51 (1983). *Clark v. Taylor*, 710 F.2d 4, 14 (1st Cir. 1983). *Miga*, supra at 355.

COUNT 2: VIOLATIONS of 42 U.S.C. 1983: FALSE IMPRISONMENT

33. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1 through 32 above with the same force and effect as if herein set forth.

34. As a result of the unlawful and malicious arrest of EVANS for which there was no probable cause, EVANS was incarcerated for 48 hours without justification or consent, whereby Defendants deprived EVANS of his liberty without due process of law and his right to equal protection of the laws, and the due course of justice was impeded, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. sec. 1983.

WHEREFORE, Plaintiff demands judgment for the false detention and confinement against all the Defendant's jointly and severally, for actual, general, special and compensatory damages in the amount of \$100,000.00 and further demands judgment against each of said Defendants, jointly and severally, for punitive damages in the amount of \$100,000.00 plus the costs of this action, including attorney's fees, and such other relief deemed to be just and equitable.

COUNT 3: VIOLATION OF 42 U.S.C. 1983: EXCESSIVE FORCE

35. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1 through 34 above with the same force and effect as if herein set forth.

36. The conduct and actions of LOPEZ, ROSA and JOHN DOE, acting in concert and under color of law, in authorizing, directing and/or causing mace to be sprayed into the face of EVANS, and for EVANS to be repeatedly punched about the face and body, was excessive and unreasonable, was done intentionally, willfully, maliciously, with deliberate indifference and/or with a reckless disregard for the natural and probable consequences of their acts, was done without lawful justification or reason, and was designed to and did cause specific and serious physical and emotional pain and suffering in violation of Plaintiffs rights as guaranteed under 42 U.S.C. Sec 1983, and the Fourth and Fourteenth Amendments to the United States Constitution, including the right to be free from the use of excessive, unreasonable and unjustified force.

37. As a direct and proximate result of the foregoing, Plaintiff was subject to great physical and emotional pain and humiliation, was deprived of her liberty, and was otherwise damaged and injured.

WHEREFORE, Plaintiff demands judgment for the excessive force used against him by the Defendants against all Defendants jointly and severally, for actual, general, special and compensatory damages in the amount of \$1,000,000 and further demands judgment against each of said Defendants, jointly and severally, for punitive damages in the amount of \$1,000,000, plus the costs of this action, including attorney's fees, and such other relief deemed to be just and equitable.

COUNT 4: ASSAULT AND BATTERY

38. Plaintiff re-alleges and incorporates by reference the allegations in paragraphs 1 through 37 above with the same force and effect as if herein set forth.

39. By the aforementioned conduct described above, Defendants inflicted the torts of assault and battery upon EVANS. The acts and conduct of LOPEZ, ROSA, and JOHN DOE were the direct and proximate cause of injury and damage to EVANS and violated EVANS' statutory and common law rights as guaranteed by the laws of the Constitution of the State of New York.

40. LOPEZ, ROSA, and JOHN DOE'S acts constituted an assault upon Plaintiff in that aforementioned Defendants intentionally attempted to injure EVANS or commit battery upon him.

41. LOPEZ, ROSA, and JOHN DOE'S acts constituted a battery upon EVANS in that the above described bodily contact was intentional, unauthorized, and grossly offensive in nature.

42. The actions of LOPEZ, ROSA, and JOHN DOE were intentional, reckless, and unwarranted, and without any just cause or provocation, and aforementioned Defendants knew, or should have known that their respective actions were without the consent of EVANS.

43. The injuries sustained by Plaintiff were caused wholly and solely by reason of the conduct described above, and EVANS did not contribute thereto.

44. As a direct and proximate result of the foregoing, Plaintiff was subjected to great physical and emotional pain and humiliation, was deprived of his liberty, and was otherwise damaged and injured, including but not limited to a broken, displaced nose.

WHEREFORE, Plaintiff demands judgment for the assault and battery exerted against him towards all Defendants jointly and severally, for actual, general, special and compensatory damages in the amount of \$1,000,000 and further demands judgment against each of said Defendants, jointly and severally, for punitive damages in the amount of \$1,000,000, plus the costs of this action, including attorney's fees, and such other relief deemed to be just and equitable.

COUNT 5: VIOLATIONS OF 42 U.S.C. 1983: MALICIOUS PROSECUTION

45. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1 through 44 above with the same force and effect as if herein set forth.

46. Defendants, intentionally and maliciously, instituted and pursued a criminal action against EVANS that was brought without probable cause and was dismissed in EVANS' favor.

47. As a result of the concerted unlawful and malicious prosecution of EVANS, the Defendants deprived EVANS of both his right to liberty without due process of law and his right to equal protection of the laws, and the due course of justice was impeded, in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States, and 42 U.S.C. sec. 1983.

WHEREFORE, Plaintiff demands judgment for the malicious prosecution against all Defendants jointly and severally, for actual, general, special and compensatory damages in the amount of \$1,000,000 and further demands judgment against each of said Defendants, jointly and severally, for punitive damages in the amount of \$1,000,000, plus the costs of this action, including attorney's fees, and such other relief deemed to be just and equitable.

COUNT 6: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

48. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1 through 47 above with the same force and effect as if herein set forth.

49. Defendants intentional and reckless conduct resulted in the extended incarceration of EVANS.

50. The failure of the Defendants to properly exercise discretion in who they arrest was extreme and outrageous conduct, and this conduct was the actual and proximate cause of severe emotional distress suffered by EVANS due to his wrongful imprisonment.

WHEREFORE, Plaintiff demands judgment against all Defendants for actual, special and compensatory damages in an amount deemed at time of trial to be just, fair, and appropriate.

COUNT 7: VIOLATIONS OF 42 U.S.C. 1983: CONSPIRACY

51. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1 through 50 above with the same force and effect as if herein set forth.

52. At all times relevant to this Complaint, the Defendants engaged in a conspiracy in furtherance of illegal behavior in allowing the false arrest and malicious prosecution of EVANS.

53. Defendants had knowledge or, had they diligently exercised their duties to instruct, supervise, control and discipline on a continuing basis, should have had knowledge that the wrongs conspired to be done as heretofore alleged, were about to be committed.

54. Defendants had power to prevent or aid in preventing the commission of said wrongs, could have done so by reasonable diligence, and knowingly, recklessly, or with gross negligence failed to do so.

55. Defendants directly or indirectly, under color of law, approved or ratified the unlawful, deliberate, malicious, reckless and wanton conduct heretofore described.

56. As a direct and proximate cause of the negligent and intentional acts of the Defendants, as set forth in paragraphs 1-50 above, Plaintiff suffered loss of physical liberty, severe physical pain and severe mental anguish in connection with the deprivation of his constitutional and statutory rights guaranteed by the Fourteenth Amendment of the Constitution of the United States and protected by 42 U.S.C. sec. 1983.

WHEREFORE, Plaintiff demands judgment against all Defendants jointly and severally, for actual, general, special, compensatory damages in the amount of \$1,000,000 and further demands judgment against each of said Defendants, jointly and severally, for punitive damages in the amount of \$1,000,000, plus the costs of this action, including attorney's fees, and such other relief deemed to be just and equitable.

COUNT 8: NEGLIGENCE

57. Plaintiff repeats and re-alleges and incorporates by reference the allegations in paragraphs 1 through 56 above with the same force and effect as if herein set forth.

58. Defendants owed a duty to pursue criminal actions only against suspects for which there is sufficient probable cause that the suspect had committed the criminal offense in question.

59. Defendants breached that duty to EVANS when they arrested him for assault when there was, no probable cause sufficient to support a finding that EVANS was in any way committing a crime before the police approached him.

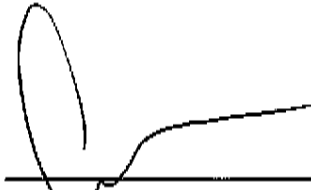
60. As a result of the breach, which were the actual and proximate cause of EVANS' injury, EVANS suffered harm and damages.

61. Defendants are also liable under the doctrine of *Respondeat Superior*.

WHEREFORE, Plaintiff demands judgment against Defendants for actual, special, compensatory and punitive damages, attorney's fees, costs, expenses, and interest in an amount deemed at time of trial to be just, fair and appropriate.

Respectfully submitted,

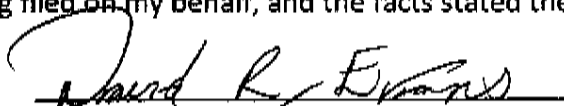
DAVID EVANS
By his attorney
March 7, 2014



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380 Lexington Avenue, 17th Floor
New York, NY 10168
212-405-2233

PLAINTIFFS VERIFICATION

The undersigned, being duly sworn, deposes and says that I am the Plaintiff herein, and have read the foregoing pleading filed on my behalf, and the facts stated therein are true.


DAVID EVANS

Subscribed and sworn to before me, this 7th day of March 2014



Notary Public

ROBERT GROSS
NOTARY PUBLIC-STATE OF NEW YORK
No. 02GR6195069
Qualified in New York County
My Commission Expires October 20, 2016